

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

PENNY KENNEDY, and
RAYMOND KENNEDY, individually
and as guardians and next
friends of
TREVOR KENNEDY, an infant
under the age of eighteen,

Plaintiffs,

v.

CIVIL ACTION NO. 2:03-0175

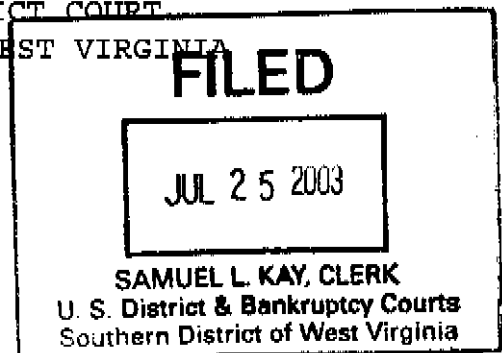
UNITED STATES OF AMERICA;
COMMUNITY HEALTH FOUNDATION OF
MAN, WEST VIRGINIA, INC., and
PLARIDEL TORDILLA, individually,

Defendants.

UNITED STATES' MOTION TO DISMISS
COUNT VI OF THE AMENDED COMPLAINT AGAINST THE UNITED STATES
FOR LACK OF SUBJECT MATTER JURISDICTION

COMES now the United States of America, ("United States"), and hereby moves the court pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for the entry of an order dismissing Count VI of the Amended Complaint against it for want of subject matter jurisdiction.

In support of its motion, the United States says that the court lacks subject matter jurisdiction to hear plaintiff's breach of contract or implied warranty claim set forth in paragraph VI of the Amended Complaint because jurisdiction for contract claims such




as plaintiffs lies with the Court of Federal Claims. 28 U.S.C.
§§ 1346(a) and 1491.

Wherefore, the United States prays this court enter an order
dismissing Count VI of the Amended Complaint against it for want of
subject matter jurisdiction.

Respectfully submitted,

KASEY WARNER
United States Attorney

By:


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